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DIV. OF OIL, GAS & MINING

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

COP COAL DEVELOPMENT COMPANY,

Appellant.

RE:

(Appeal from decision by the Utah State Office, Bureau of Land Management (November 2, 2011, and November 17, 2011), approving a Modification of the Resource Recovery and Protection Plan for the Continuous Miner Pillar panels in the Castle Valley nos. 3 and 4 Mines within the Bear Canyon Logical Mining Unit. UTU-73342)

IBLA 2012-039, 052 (and consolidated cases)

**COP'S REPLY TO CASTLE VALLEY'S
RESPONSE TO MOTION FOR
RECONSIDERATION**

[Oral argument requested]

3482 (UTG 023)
UTU-73342 (LMU)
U-020668 (Lead Coal Lease)

Most of Castle Valley's arguments in its Response are addressed in COP's Reply supporting its Motion for Reconsideration, filed in IBLA 2011-112. Castle Valley incorporated

its Response from that appeal in its Response herein; COP likewise incorporates its previous Reply, by this reference, and attaches a copy hereto.¹

Castle Valley also raises issues that require specific response. First, Castle Valley again suggests that COP is merely “rehashing” issues related to IBLA 2011-112 and that Castle Valley’s incorrect statements about longwall mining supposedly contributing to CW Mining’s bankruptcy, are “irrelevant and immaterial” to the reconsideration of the Board’s August 6, 2011 Ruling in IBLA 2012-39 and -52 (the “August 6, 2011 Ruling”). But Castle Valley’s assessment of COP’s arguments and of this issue, generally, is simply incorrect. Castle Valley ignores the premises upon which the BLM and this Board have appeared to rely, as COP has explained in its Motions for Reconsideration in both this consolidated appeal and IBLA 2011-112.

The following paragraphs demonstrate how this issue is relevant in this appeal and in the present Motion for Reconsideration. In its Order of June 21, 2012, in IBLA 2011-112, the Board expressly opined that the coal mined by CW Mining using the longwall method exceeded contract specifications for ash content and did not meet the contractual quality standards. The Board, apparently relying on the incorrect information provided by Castle Valley, then wrongly concludes that longwall mining and “the poor quality of the coal led directly to CWM’s involuntary bankruptcy.” 182 IBLA 262-3.

This is a crucial misperception of the economic value of longwall mining, which was fostered by Castle Valley’s statements. The issue cannot, therefore, simply be dismissed as “irrelevant” or “trivial”; it appears to be a fundamental component of the Board’s analysis and decisions about the economic viability of the longwall method in the Mine. In the discussion of

¹ Unless otherwise indicated (or if clarity is needed), the abbreviated terms used herein shall have the same meaning as used in COP’s other pleadings and documents filed in this appeal.

MER and the comparison of the economic advantages of different mining methods, issues about the veracity of the information upon which the BLM and Board are making such decisions, are not only relevant, they are core.

Further, Castle Valley's specific suggestion that the issues are not relevant to the August 6, 2012 Ruling, is also incorrect. In that Ruling, at p. 6, the Board says,

In again arguing that the R2P2 modifications approved by BLM in the November 2011 decisions will not achieve MER, COP focuses primarily on the January 7, 2011, decision approving Castle Valley's request to extract coal from the Tank Seam by room-and-pillar mining, rather than by longwall mining. The Board's rationale in ANR & COP for rejecting the argument that altering the R2P2 to allow room-and-pillar mining would not achieve MER of the Federal coal applies to the two further modifications at issue in the November 2 and 27 decisions [IBLA 2012-39 and -52]. *See ANR & COP, 182 IBLA at 257-66.*

Thus, the August 6, 2012 Ruling as to the MER issue was also based, at least in part, on the same rationale and analysis underlying the Board's June 21, 2012 decision in IBLA 2012-112 (i.e., its stated belief that longwall mining contributed toward CW Mining's economic problems). COP's clarifications about the chronology of the CW Mining involuntary bankruptcy, contrasted with the timing of the implementation of longwall mining, are therefore not only extremely relevant in the reconsideration of the August 6, 2012 Ruling, they are necessary for this Board to make correct determinations, globally, in all of these related appeals. If there are serious factual flaws in one of the key cornerstones of the BLM's January 7, 2011 Decision on the R2P2 modification, as well as this Board's June 2012 ruling in IBLA 2012-112 affirming it, then those flaws need to be examined, even now, because they undermine the integrity of those decisions. Those same flaws consequently undermine the subsequent decisions and rulings on the R2P2 modifications, which decisions and rulings are inescapably connected and intertwined with the original January 7, 2011 Decision. And the fact that the Board, in ruling on IBLA 2012-39 and -52, implies that

it continued to rely upon those incorrect facts, suggests that the issues related to the involuntary bankruptcy and the economic viability of longwall mining are extremely relevant in a motion to reconsider that decision.

Castle Valley's argument suggests that COP should simply forego appeals of these subsequent decisions related to proposed "minor" modifications to the R2P2. In fact, counsel for COP and Castle Valley have even discussed possible stipulations to avoid the necessity of appealing every decision. But, frankly, COP is concerned that to not appeal the subsequent decisions--that continue to be based on the original flawed decision--might somehow constitute a waiver of its rights. Because so much is at stake for COP--as not only the owner of the Mine but also the owner of the reversionary interest after the Operating Agreement expires--COP continues to insist on receiving notice of the requests for modification and the opportunity to participate in the process before the BLM, not just at the appellate level.

Finally, Castle Valley's request for fees is not warranted. Nothing in the regulations governing appeals before the Board provides for fees, generally, and Castle Valley has failed to set forth an adequate basis, specifically, for an award of fees in this matter. COP disputes—emphatically--Castle Valley's suggestion of lack of good faith, particularly where COP is merely explaining to the Board how its decisions (and the BLM decisions) may be based on a flawed premise, fostered by an incorrect statement made by Castle Valley (which statement was made by Castle Valley after the commencement of COP's original appeal). This case does not warrant any type of fee award and certainly not for all fees incurred by Castle Valley since filing its Answer to the Statement of Reasons in IBLA 2011-112, as it suggests. The request for fees is not warranted by regulation or circumstance and should therefore be denied.

CONCLUSION

Based on the foregoing, as well as the arguments set forth in COP's Motion for Reconsideration, COP respectfully requests that the Board's August 6, 2012 Ruling, be reconsidered, that the matter be referred to an administrative law judge for fact-finding, and that it then be consolidated and considered together with COP's Motion for Reconsideration in IBLA 2011-111 and -112, at the same time the Board is deliberating on the merits of the more recent appeals and petitions for stay in IBLA 2012-137 and 2012-138.

DATED this 9TH day of November, 2012.

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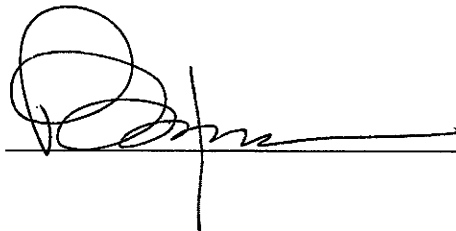
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IBLA 2011-111, 112 (and consolidated cases)

**REPLY TO CASTLE VALLEY'S
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3482 (UTG 023)
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In its response to COP's Motion for Reconsideration, Castle Valley asserts that COP's Motion is "trivial," and based on "irrelevant" considerations, namely COP's corrective response to Castle Valley's statement that C.W. Mining, Castle Valley's predecessor in interest to the

operating interests in the leases at issue here, had “longwalled itself into bankruptcy.” Castle Valley also suggests that COP’s Motion has not satisfied the regulatory requirements for such a motion and is nothing more than a “rehashing” of the arguments made previously.

Castle Valley apparently missed the entire point of the Motion for Reconsideration. COP’s Motion is based on the first example listed in 43 C.F.R. 4.415, namely “a misinterpretation of fact.” Far from being a trivial or irrelevant issue, the alleged lack of economic viability of longwall mining in the Tank Seam was the essential **premise** of Castle Valley’s original request for modifying the R2P2 and the underlying **premise** of the BLM Decision appealed from. COP asserts that a fair reading of the Board’s June 21, 2012, Order demonstrates that that same **presumption** or **premise** (the purported “fact” that longwall mining in this mine was inherently uneconomical) was the foundation for the Board’s analysis. The problem is that that premise is fundamentally incorrect.¹

Castle Valley’s request for modification to the R2P2, and the BLM’s decision to approve the modification to change from longwall mining to room-and-pillar mining, were *premised* on this mistaken “fact.” The issue raised in COP’s Motion is neither “trivial” nor “irrelevant;” it is the single most salient issue in these appeals.

Royalties are calculated on tonnage of coal mined. Both COP and the United States will be shortchanged in eventual overall royalties received--because of this one erroneous premise in

¹ Castle Valley likewise erroneously argues that COP did not address the regulation at 43 C.F.R. §4.403(c), which requires that a Motion for Reconsideration include the extraordinary circumstances that warrant reconsideration. As set forth in the Motion itself, the discussion in the Motion satisfies both of the “regulatory requirements.” By addressing, for example, the fact that Castle Valley mischaracterized the economic viability of longwall mining, as well as the other issues discussed, COP has, in fact, addressed the “extraordinary circumstances” that warrant reconsideration of the Board’s decision.

BLM's original decision and in the Board's erroneous adoption thereof. Castle Valley's argument rings hollow. Its statement, in its Answer to the Statement of Reasons, that C.W. Mining "longwalled itself into bankruptcy" was raised in support of its extended argument about the inappropriateness of longwall mining in this Mine and the associated need to change mining methodology to room-and-pillar. COP's reason for raising this issue is not because the BLM and Board misunderstood the reasons for C.W. Mining's involuntary bankruptcy. That fact truly would be irrelevant to these appeals. COP raises the issue *because Castle Valley erroneously told BLM, as well as this Board, that the change to room-and-pillar mining was necessitated by longwall mining's nonviability in this mine.* COP's arguments are no more trivial and irrelevant than they are motivated by "spite." Castle Valley has misrepresented salient facts to the BLM and this Board, and both COP and the United States are being directly harmed as a result.

COP renews its request for reconsideration and for administrative fact-finding.

Dated this 8th day of October, 2012.

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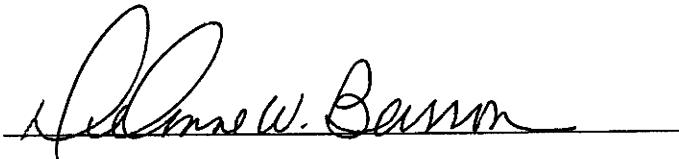
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